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AMERICAN MARITIME OFFICERS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

AMERICAN MARITIME OFFICERS,
affiliated with Seafarers International
Union of North America, AFL-CIO,

Plaintiff,

vs.

AMERICAN PRESIDENT LINES,
LTD.; APL MARITIME, LTD.,

Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
RELIEF, VIOLATION OF 29 U.S.C. §
185 AND INJUNCTIVE RELIEF**

Plaintiff American Maritime Officers, affiliated with the Seafarers International Union of North America, AFL-CIO, by its attorneys, Hartnett, Smith & Paetkau and Glanstein LLP, as and for its Complaint against Defendant American President Lines, Ltd., respectfully alleges as follows:

FACTS

6. AMO and APL are parties to a MOU dated November 2, 2015, which sets forth the economic terms and conditions of employment for AMO members working aboard the M/V APL Guam, in accordance with the AMO-APL CBA, in which APL expressly recognized AMO as the “sole and exclusive bargaining representative for all Licensed Officers employed aboard Company owned and/or operated U.S. flag ocean-going vessels.” This broad recognition language includes any deck officers, engineers, and radio officers, and all senior shipboard positions, which the Parties have acknowledged are supervisors as defined under the National Labor Relations Act, 29 U.S.C. § 152 (11).

7. The AMO-APL CBA (including the MOU) requires mandatory arbitration before a designated contract Arbitrator of any and all complaints, controversies, disputes and grievances arising out of the application and performance by the Parties of their terms. Importantly, the MOU and AMO-APL CBA also require preservation of all AMO jobs in the event of any sale or transfers of the M/V APL Guam or other covered vessels.

8. On or about November 3, 2015, APL announced that the M/V APL Guam, previously a foreign flagged vessel with no U.S. licensed officers in any onboard positions, would take the place of another, much larger vessel operated by APL under the U.S. flag in the U.S. Maritime Administration’s Maritime Security Program (“MSP”). The MSP offers a subsidy to vessel operators for operating U.S. flagged vessels that could be available to the U.S. in times of armed conflict or other national emergency.

9. At that same time, on or about November 3, 2015, Eric Mensing, President of APL, also announced that the M/V APL Guam would begin service to the island of Guam, and that AMO would fill all licensed officers and engineer positions on the vessel now that it was being operated under the U.S. flag for the first time.

10. As a result of APL placing the newly U.S. flagged M/V APL Guam into the MSP subsidy program, APL removed a different vessel from the program and reflagged it as a foreign flag vessel that did not require crewing with U.S. Coast Guard licensed deck officers and engineers.

1 11. The vessel removed from the MSP program and reflagged, the M/V APL
2 Cyprine, had been up to that point working elsewhere than the Island of Guam and was crewed
3 in licensed deck officer positions by members of the International Organization of Masters,
4 Mates, and Pilots, affiliated with the International Longshoremen's Association, AFL-CIO
5 ("MMP"), and in all licensed engineer positions by the Marine Engineers' Beneficial
6 Association, AFL-CIO ("MEBA").

7 12. Shortly after APL's November 2015 announcement, both MMP and MEBA
8 commenced grievances against APL and its subsidiary, APL Marine Services, which had
9 operated the Cyprine on a different route than to Guam. These grievances claimed that, based
10 on language in their Collective Bargaining Agreements giving them crewing rights to APL
11 Marine Services vessels in the MSP program, the M/V APL Guam had to be crewed in all
12 licensed deck officer and engineer positions by their members, and that they had to be
13 recognized as the respective bargaining representatives for those positions on the M/V APL
14 Guam, notwithstanding the existence of the AMO-APL CBA covering the same positions on the
15 vessel.

16 13. MEBA and MMP's grievances were consolidated with similar grievances
17 brought by unlicensed crewmember unions previously aboard the M/V APL Cyprine for
18 arbitration in Washington D.C. on December 10-11, 2015. The sole issue for the arbitrator was
19 "whether the Company violated the Unions' collective bargaining agreements when it refused to
20 crew the APL Guam with employees represented by the Unions, and if so what shall be the
21 remedy?" (Emphasis added.)

22 14. AMO did not receive notice of the scheduled arbitration from APL or the
23 concurrent opportunity to protect its right to arbitrate its own contractual recognition for
24 licensed deck officers and engineers aboard the M/V APL Guam, as required by the AMO-APL
25 CBA.

26 15. As affiliated unions of the AFL-CIO, AMO, MEBA and MMP are all bound
27 under the AFL-CIO Constitution to resolve any disputes concerning their respective
28 representation rights and work jurisdictions in accordance with Article XX of the AFL-CIO

1 Constitution. Article XX, Section 20 of the AFL-CIO Constitution also forbids AFL-CIO
2 affiliated unions from seeking determinations of their representation rights in relation to another
3 affiliated union “in court or other legal proceedings.” This is the case whether the affiliated
4 unions are in good standing at the AFL-CIO, which neither MEBA nor MMP were at the time
5 AMO crewed the M/V APL Guam.

6 16. On February 9, 2016, the arbitrator in the APL-MEBA-MMP dispute issued a
7 ruling finding in favor of MEBA and MMP and the unlicensed crew unions and gave the
8 parties’ thirty (30) days to fashion a remedy (the “APL-MEBA-MMP arbitration ruling”).

9 17. On February 10, 2016, APL Maritime Director of Labor Relations John Dragone
10 notified AMO member Captain Christopher Bartlett, the Master of the M/V APL Guam, of the
11 APL-MEBA-MMP arbitration ruling and that APL now intended to replace all
12 AMO-represented licensed deck officers and engineers on the M/V APL Guam with MMP and
13 MEBA represented officers and engineers forthwith. AMO’s officials were simultaneously
14 notified of APL’s decision and imminent transfer of the M/V APL Guam to the jurisdiction of
15 MMP and MEBA.

16 18. On February 11-12, 2016, the Presidents of MEBA and MMP also made separate
17 public statements that they expected their members to replace the AMO licensed deck officers
18 and engineers on the M/V APL Guam forthwith, and that their unions would shortly be
19 recognized as sole bargaining representatives for licensed deck officers and engineers on the
20 M/V APL Guam, instead of AMO. They did so based on APL’s representations and
21 notwithstanding AMO’s existing contract rights under the AMO-APL CBA or the requirements
22 of the AFL-CIO Constitution.

23 19. AMO immediately requested that APL reconsider withdrawing recognition from
24 AMO and instead maintain the *status quo*, since failure to do so would violate AMO’s
25 contractual rights as the sole and exclusive bargaining representative for the supervisory
26 licensed deck officers and engineers on the M/V APL Guam. AMO also communicated to APL
27 that it intended to also state its position to the other unions and the AFL-CIO regarding its
28

1 Article XX rights on the M/V APL Guam, which it must do through its affiliate Seafarers
2 International Union of North America.

3 20. To date, APL has rejected AMO's request and instead notified Captain
4 Christopher Bartlett aboard the M/V APL Guam that it intends to place, so that they can
5 familiarize themselves with the operations of the M/V APL Guam, an MMP represented
6 Captain, an MMP represented Chief Mate, a MEBA represented Chief Engineer, and a MEBA
7 represented First Assistant Engineer aboard the M/V APL Guam on or around February 23,
8 2016 for a trip to Busan, South Korea, where all AMO licensed deck officers and engineers will
9 be removed and replaced on or around February 28-29, 2016. AMO is informed and believes,
10 and thereon alleges, that APL intends to permanently replace the AMO licensed deck and
11 engineer officers with MMP and MEBA members no later than 10:00 a.m. Guam time on
12 February 29, 2016.

13 21. APL's refusal to maintain the *status quo* and its declared intent to withdraw
14 recognition from AMO barely ten (10) days after receipt of the APL-MEBA-MMP arbitration
15 ruling constitutes a violation of its agreement to continue to recognize AMO. This violation
16 will irreparably harm AMO's members, since AMO's recognition rights cannot be preserved on
17 the M/V APL Guam once MEBA and MMP crew the vessel.

18 22. APL also has refused to provide AMO with information from its pending
19 acquisition by CMA CGM, a foreign corporation, about whether AMO's contracts with APL,
20 including without limitation the AMO-APL CBA, are being assumed by the buyer as a
21 successor employer, as is required under the sale and transfer provisions in the AMO-APL CBA
22 and by federal labor law. As such, a failure to maintain the *status quo* by APL may render
23 AMO's rights to pursue arbitration remedies against APL concerning the above violations of its
24 agreements with APL futile once APL's acquisition by CMA CGM is completed.

25 23. As a direct, proximate result of APL's stated intent to (1) place MEBA/MMP-
26 represented deck officers and engineers alongside AMO-member licensed deck officers and
27 engineers on the M/V APL Guam as early as February 22, 2016, (2) withdraw recognition of
28 AMO as the exclusive bargaining representative for the current-employed AMO licensed deck

officers and engineers on board the M/V APL Guam, and (3) to permanently remove all AMO licensed deck officers and engineers from the M/V APL Guam on or about February 29, 2016, AMO and its affected members, the licensed deck officers and engineers now working aboard the M/V APL Guam, will suffer irreparable harm. Specifically, an arbitration was held by APL with the MEBA/MMP unions that implicated AMO's contractual rights under the AMO-APL CBA, AMO was not given any opportunity to participate or object, AMO now wants to protect its representation rights and the rights of its members either in arbitration against APL or at the AFL-CIO against the MEBA/MMP unions, and failure to preserve the *status quo* will render AMO's claims in those forums futile because (1) APL is in the process of being sold; and (2) the MEBA/MMP unions were under sanctions at AFL-CIO when AMO crewed the ship, so that any action there would be futile since once under sanctions a second set of sanctions against an offending union is meaningless. In addition, AMO is likely to succeed on the merits of its claims against APL; AMO is likely to suffer irreparable harm in the absence of immediate, preliminary injunctive relief; the balance of the equities tips in favor of AMO on its request for immediate, preliminary injunctive relief; and an injunction is in the public interest. *See Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 374 (2008).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF – AGAINST ALL DEFENDANTS

(Violation of 29 U.S.C. § 185 – Withdrawal of Recognition of Incumbent Union
in Violation of Valid Collective Bargaining Agreement)

24. Plaintiff re-alleges and incorporates herein by reference the allegations of Paragraphs 1 through 23, inclusive, above, as though fully set forth herein.

25. By reason of the allegations contained in Paragraphs 22-23 above, AMO is entitled to an order and judgment directing APL's representatives to cease and desist from the above actions, which violate AMO's rights as the exclusive bargaining representative for licensed deck officers and engineers aboard the M/V APL Guam, including placing any MMP or MEBA represented officers or engineers aboard the M/V APL Guam, until AMO has the opportunity to pursue its contractual and AFL-CIO Constitutional rights protecting its

1 jurisdiction as the exclusive bargaining representative for licensed deck officers and engineers
2 aboard the M/V APL Guam.

3 26. By reason of the allegations contained in Paragraphs 22-23 above, AMO is
4 entitled to an order and judgment directing APL's representatives to put all other business aside
5 and respond to AMO's requests for information concerning whether CMA CGM is being bound
6 as a successor to APL's contracts with AMO for this vessel following any sale, transfer, or
7 assignment of the vessel, which appears imminent.

8 27. APL's failure and refusal to continue to recognize AMO as the exclusive
9 bargaining representative for its currently-employed licensed deck officers and engineers aboard
10 the M/V APL Guam, pursuant to the AMO-APL CBA, APL has a legal and contractual duty to
11 continue to recognize and bargain with AMO, and not to withdraw recognition from AMO. By
12 failing and refusing to continue to recognize AMO as the exclusive bargaining representative for
13 its currently-employed licensed deck officers and engineers aboard the M/V APL Guam, and by
14 threatening to remove them from employment aboard the M/V APL Guam and to replace them
15 with MEBA/MMP members, Defendants, and each of them, have violated § 301 of the Labor
16 Management Relations Act, 29 U.S.C. § 185.

17 28. By reason of Defendants' violation of 29 U.S.C. § 185, Plaintiff is entitled to
18 certain relief, including enforcement of APL's obligation to continue to recognize AMO and its
19 member licensed deck officers and engineers aboard the M/V APL Guam, and not to replace
20 them with MEBA/MMP members, as set forth below.

21 SECOND CLAIM FOR RELIEF – AGAINST ALL DEFENDANTS

22 (Declaratory Relief – 28 U.S.C. § 2201(a))

23 29. Plaintiff re-alleges and incorporates herein by reference the allegations of
24 Paragraphs 1 through 28, inclusive, above, as though fully set forth herein.

25 30. A real and actual controversy of sufficient immediacy and reality to warrant
26 immediate declaratory relief exists between the Parties as to the enforceability of the AMO-APL
27 CBA; APL's decision to remove the currently-employed licensed deck officers and engineers
28 aboard the M/V APL Guam who are members in good standing of AMO, and to replace them

1 with MEBA/MMP members; and APL's failure and refusal to continue to recognize AMO as
2 the exclusive bargaining representative for its, pursuant to the AMO-APL CBA.

3 31. Specifically, AMO contends that APL has a legal and contractual duty to
4 continue to recognize and bargain with AMO, and not to withdraw recognition from AMO. By
5 failing and refusing to continue to recognize AMO as the exclusive bargaining representative for
6 its currently-employed licensed deck officers and engineers aboard the M/V APL Guam, and by
7 threatening to remove them from employment aboard the M/V APL Guam and to replace them
8 with MEBA/MMP members, Defendants, and each of them, have violated § 301 of the Labor
9 Management Relations Act, 29 U.S.C. § 185. AMO is informed and believes, and thereon
10 alleges, that Defendants contend that they are not required to continue to recognize AMO's
11 contractual rights and the AMO-APL CBA based on the recent arbitration decision; Defendants
12 intend to remove AMO-member licensed deck officers and engineers aboard the M/V APL
13 Guam, and to replace them with MEBA/MMP members on or about February 29, 2016; and that
14 Defendants intend not to honor their legal and contractual obligations to AMO and its members.

15 32. The controversy between Plaintiff and Defendants is thus real and substantial.
16 Plaintiff AMO demands specific relief through a decree of a conclusive character that APL has a
17 legal and contractual duty to continue to recognize and bargain with AMO; not to withdraw
18 recognition from AMO and instead continue to recognize AMO as the exclusive bargaining
19 representative for its currently-employed licensed deck officers and engineers aboard the M/V
20 APL Guam; not to remove them from employment aboard the M/V APL Guam and not to
21 replace them with MEBA/MMP members; and Defendants, and each of them, have violated §
22 301 of the Labor Management Relations Act, 29 U.S.C. § 185. The nature and extent of the
23 adverse legal interests between Plaintiff AMO and Defendants are apparent, and the controversy
24 is definite and concrete.

25 33. Plaintiff AMO is entitled to a declaratory judgment that APL has a legal and
26 contractual duty to continue to recognize and bargain with AMO; not to withdraw recognition
27 from AMO and instead continue to recognize AMO as the exclusive bargaining representative
28 for its currently-employed licensed deck officers and engineers aboard the M/V APL Guam; not

1 to remove them from employment aboard the M/V APL Guam and not to replace them with
 2 MEBA/MMP members; and Defendants, and each of them, have violated § 301 of the Labor
 3 Management Relations Act, 29 U.S.C. § 185.

4 PRAYER FOR JUDGMENT AND RELIEF

5 WHEREFORE, Plaintiff respectfully requests judgment and relief as follows:

6 a. For a declaratory judgment that Defendants:

7 (i) Have a legal and contractual duty to continue to recognize and bargain
 8 with AMO;

9 (ii) Shall not withdraw recognition from AMO and instead must continue to
 10 recognize AMO as the exclusive bargaining representative for its currently-employed licensed
 11 deck officers and engineers aboard the M/V APL Guam;

12 (iii) Shall not remove the AMO member licensed deck officers and engineers
 13 from employment aboard the M/V APL Guam, and shall not replace them with MEBA/MMP
 14 members; and

15 (iv) Defendants, and each of them, have violated § 301 of the Labor
 16 Management Relations Act, 29 U.S.C. § 185.

17 b. For a preliminary and a permanent injunction requiring Defendants to continue to
 18 recognize and bargain with AMO; not to withdraw recognition from AMO and instead continue
 19 to recognize AMO as the exclusive bargaining representative for its currently-employed
 20 licensed deck officers and engineers aboard the M/V APL Guam; not to remove them from
 21 employment aboard the M/V APL Guam, and not to replace them with MEBA/MMP members;
 22 directing APL to put all other business aside and refrain from placing MEBA and MMP
 23 represented officers and engineers aboard the M/V APL Guam, or from withdrawing
 24 recognition from AMO as the sole and exclusive representative of those officers on the M/V
 25 APL Guam in violation of the current contracts between APL and AMO, including without
 26 limitation the AMO-APL CBA; and directing APL to put all other business aside and produce
 27 forthwith the documents requested by AMO in connection with APL's pending acquisition by
 28

1 CMA CGM pertaining to assumption of AMO's current contracts with APL, in compliance with
2 the sale and transfer obligations therein, as a sale appears imminent;

3 c. For costs of suit;

4 d. For reasonable attorney's fees under Section 7(e) of the Norris LaGuardia Act,
5 29 U.S.C. § 107; and

6 e. For such other and further relief as the Court deems just and proper.

7 Dated: February 20, 2016

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GLANSTEIN LLP

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9
10 By 

Tyler M. Paetkau

11 Attorneys for Plaintiff
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